

**Letters of Findings Number: 04-20150383; 01-20150210**  
**Sales Tax & Individual Income Tax**  
**For Tax Years 2011, 2012, and 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Sole proprietor/individual failed to maintain adequate records and was responsible for the sales tax because he was statutorily required to collect and remit sales tax on tangible personal property sold. Individual was responsible for income tax because he earned income from sales of tangible personal property. Individual was responsible for the negligence penalty because he failed to affirmatively establish reasonable cause for penalty abatement.

### **ISSUES**

#### **I. Sales Tax & Income Tax - Imposition - Burden of Proof.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's proposed assessments.

#### **II. Tax Administration - Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

### **STATEMENT OF FACTS**

Taxpayer is a sole proprietor who has specialized in the vehicle salvage business since 1999. In 2014, the Indiana Department of Revenue ("Department") conducted a sales/use audit of Taxpayer's business records for the tax years 2011, 2012, and 2013. Pursuant to the audit, the Department determined that Taxpayer failed to maintain adequate records. As a result, the audit found that Taxpayer had unreported sales and thus proceeded to assess Taxpayer additional sales tax, interest, and negligence penalty based on the best information available to the Department at the time of the audit.

The income generated by the business flowed through to Taxpayer and was reported on Taxpayer's individual income tax returns. The Department's audit further determined that Taxpayer had additional income for the same tax years from the unreported sales. As a result, the audit assessed additional income tax, interest, and penalty accordingly.

Taxpayer protested both sales tax and income tax assessments. Prior to the hearing, Taxpayer offered additional documents to support his protest. After reviewing those documents, the Department's audit assessments remained unchanged. A hearing was held. This Letter of Findings addresses both protests. Additional facts will be provided as necessary.

#### **I. Sales Tax & Income Tax - Imposition - Burden of Proof.**

### **DISCUSSION**

Taxpayer provided some documentation - but not all business records requested by the Department - during the audit and prior to the hearing. The Department's audit, after reviewing the records submitted, noted that:

As part of the audit, the taxpayer provided sales invoices, bank statements, and income tax returns. Sales invoices were only provided for tax year 2013. . . . [T]he information was incomplete . . . . As a result, the best information available [to the Department] was used to complete the audit.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

IC § 6-8.1-5-4(a) further provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. **The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. (Emphasis added).**

Thus, the issue is whether Taxpayer met his burden of proof to demonstrate that the Department's proposed assessment is not correct.

During the protest process, Taxpayer argued that he properly reported his sales every month. Taxpayer stated that he kept the business records in his basement and most of his records were destroyed as a result of flood. Taxpayer further claimed that his computer system was recently upgraded and had technical difficulties reproducing copies of the business records. There are not sufficient reasons for removing the assessments in the absence of required documents.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met his burden of proof to demonstrate the proposed assessment is wrong.

## FINDING

Taxpayer's protest is respectfully denied.

## II. Tax Administration - Negligence Penalty.

### DISCUSSION

The Department's audit imposed a ten percent negligence penalty for the tax period in question. Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer simply claimed that he did not owe sales tax and thus was not negligent. It did not, however, provide documents to support its protest of the penalty. A review of the Department records further showed that Taxpayer was previously audited and was aware of his statutory responsibility of record keeping. Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that the penalty should be abated.

### **FINDING**

Taxpayer's protest of the penalty is denied.

### **SUMMARY**

Taxpayer's protest of the imposition of additional sales tax and income tax is respectfully denied. Taxpayer's protest of the imposition of the penalty is also respectfully denied.

*Posted: 11/25/2015 by Legislative Services Agency*  
An [html](#) version of this document.